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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ROY WILLIAMS,

Defendant and Appellant.

B211451

(Los Angeles County
Super. Ct. No. BA333749)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles F. Palmer, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, James William Bilderback II and Sonya Roth, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Roy Williams of possession for sale of a controlled substance (Health & Saf. Code, § 11351). Following a bifurcated bench proceeding involving special allegations regarding defendant's prior drug-related convictions and prison terms, defendant was sentenced to an aggregate state prison term of five years: the middle term of three years plus two one-year enhancements for having served prior prison terms for felonies (Pen. Code, § 667.5, subd. (b)). On appeal defendant contends his admissions were insufficient to justify the trial court's imposition of the prior prison term enhancements.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The charge against defendant arose after an undercover narcotics officer watched defendant engage in two separate sales of heroin. During a search incident to arrest, police recovered 13 balloon-covered bindles² containing tar heroin and \$93 in cash.

¹ Judge Julius Title conducted an in camera hearing after determining defendant had demonstrated good cause to discover information in three police officers' personnel and administrative records pertaining to falsification and fabrication of evidence and/or probable cause. (Evid. Code, §§ 1043, 1045; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.) At the conclusion of the hearing, the judge ordered certain material to be provided to the defense. On appeal, defendant requests we review the transcript of the in camera hearing to determine whether that order properly included all discoverable materials to which defendant is legally entitled. We have reviewed the sealed record of the in camera proceedings, which included detailed descriptions of the documents in the officers' personnel files, and conclude the trial court's order concerning the production of *Pitchess* material complied with all statutory and common law discovery requirements. (See *People v. Mooc* (2001) 26 Cal.4th 1216, 1229.)

² A bindle is a type of packaging for a small amount of narcotics.

In an information filed on January 18, 2008, defendant was charged with one count of possession for sale of a controlled substance (heroin). The information also specially alleged defendant had suffered two prior drug-related convictions within the meaning of Health and Safety Code section 11370.2, subdivision (a), and had served five separate prior prison terms for felonies under Penal Code section 667.5, subdivision (b) (possession of a controlled substance in case Nos. A646431 and BA165995, possession for sale of a controlled substance in case Nos. BA004596 and BA310058, and receiving stolen property in case No. VA019102). Defendant pleaded not guilty to the charge and denied the special allegations. He was represented by counsel throughout the proceedings.

Before jury trial commenced, defendant requested a bifurcated jury trial on the special allegations. While the jury was deliberating, defendant elected to waive his right to a jury trial and have a bench trial on the special allegations if he were convicted of the substantive offense. The jury convicted defendant as charged.³ Following the verdict, trial counsel agreed to have the bench trial at the same time as the sentencing hearing.

At the outset of the August 15, 2008 sentencing hearing, defendant agreed to admit the truth of the special allegations regarding his five prior convictions. At the court's request, the prosecutor advised defendant of his right to a bench trial on the special allegations and then asked if defendant had discussed this right with his attorney. Defendant responded in the affirmative, before he expressly waived his right to a bench trial on the special allegations.

The prosecutor then advised defendant, “[P]ursuant to the information, it is alleged that you have the following prior convictions pursuant to Penal Code [section] 667.5[, subdivision](b): [¶] [a] violation of Health and Safety Code section 11350, case number A646431, with a conviction date of September 16, 1988 out of Los Angeles Superior Court; [¶] [a] violation of Health and Safety Code section 11351, case number

³ At trial, defendant neither testified nor presented other evidence in his defense.

BA004596, with a conviction date of November 22, 1989 out of Los Angeles Superior Court; [¶] [a] violation of Penal Code section 496, case number VA019102, with a conviction date of November 30, 1993 out of Los Angeles Superior Court; [¶] [a] violation of Health and Safety Code section 11350, case number BA165995, with a conviction date of March 31, 1998 out of Los Angeles Superior Court; [¶] [a] violation of Health and Safety Code section 11351, case number BA310058, with [a] conviction date of February 5, 2006 out of Los Angeles Superior Court. [¶] It is further alleged pursuant to Health and Safety Code section 11370.2[, subdivision](a) that the charges [of violating Health and Safety Code section] 11351 . . . in case numbers BA004596 and BA310058 would constitute a prior pursuant to that Penal Code section.” The prosecutor continued, “Do you admit each of the aforementioned five priors, sir?” Defendant answered, “Yes.” Defense counsel expressly joined in the admissions, which the trial court accepted.

Following defendant’s admission, the trial court stated it “has heard the defendant questioned concerning his rights to the trial on the prior convictions. I find that he has expressly, knowingly, understandingly, and intelligently waived those rights and that his admissions are freely and voluntarily made with an understanding of the nature and consequences thereof, and there is a factual basis for the admissions and I accept the admissions.” The court exercised its discretion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 and Penal Code section 1385 and dismissed the prior prison term enhancements relating to case Nos. A646431 (possession of a controlled substance in 1988), BA004596 (possession for sale of a controlled substance in 1989), and VA019102 (receiving stolen property in 1993). The court also dismissed the two prior drug-related conviction enhancements under Health and Safety Code section 11370.2, subdivision (a).

The trial court sentenced defendant to an aggregate state prison sentence of five years, consisting of the middle term for possession for sale of a controlled substance, plus one year for each of the remaining prior prison term enhancements relating to case Nos. BA165995 (possession of a controlled substance in 1998) and BA310058 (possession for sale of a controlled substance in 2006).

DISCUSSION

Although defendant admitted he had been convicted of five prior felonies, including possession of a controlled substance in 1998 and possession for sale of a controlled substance in 2006, he contends his admissions failed to prove he had served a separate prison term for each offense. When a defendant is convicted of a felony (other than a violent felony specified in Penal Code section 667, subdivision (c)) and sentenced to state prison, Penal Code section 667.5, subdivision (b), mandates imposition of a one-year enhancement for each prior separate prison term served by the defendant for a felony conviction unless the prison term was served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction (frequently referred to as the “five-year washout period”). The enhancement may not be imposed for any prior felony for which the defendant did not serve a prior separate prison term. (Pen. Code, § 667.5, subd. (e).) A prior separate prison term is “a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.” (Pen. Code, § 667.5, subd. (g).)

Proof of an enhancement under Penal Code section 667.5, subdivision (b), therefore, requires the prosecution establish the defendant: “(1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed [the] term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction.” (*People v. Tenner* (1993) 6 Cal.4th 559, 563.) Due process requires the prosecution prove beyond a reasonable doubt every element of a sentencing enhancement allegation. (*Id.* at p. 566.) We review Penal Code section 667.5 enhancements in the light most favorable to the judgment “to determine whether substantial evidence supports the fact finder’s conclusion, i.e.,

whether a reasonable trier of fact could have found that the prosecution . . . sustained its burden of proving the defendant guilty beyond a reasonable doubt” (*Tenner*, at p. 567.)

Defendant argues he admitted only the validity of his prior convictions, not that he had served a separate prison term for each conviction and urges us to reverse the prior prison-term enhancements relating to his 1998 and 2006 convictions imposed by the trial court. As authority, he primarily relies on *People v. Epperson* (1985) 168 Cal.App.3d 856 (*Epperson*) and *People v. Lopez* (1985) 163 Cal.App.3d 946 (*Lopez*), which adopted a reversal per se rule where the defendant did not expressly admit to having served the requisite prison term.

In *Epperson*, the appellate court concluded the defendant’s admission of his prior convictions, which did not include an explicit admission of the separate prison term element, could not be construed “as including admissions of all the necessary elements of the enhancements alleged under Penal Code section 667.5, subdivision (b).” (*Epperson*, *supra*, 168 Cal.App.3d at pp. 864-865.) In *Lopez*, the appellate court stated: “[T]he record does not indicate that the amendment to the felony complaint was read to defendant, that he waived a reading thereof, or that he was ever advised that by admitting the validity of the prior convictions he would also be admitting that he served separate prison terms therefor. Thus, his admission that the prior convictions were valid cannot be construed as an admission of the allegations that he served prior, separate prison terms for each of those convictions.” (*Lopez*, *supra*, 163 Cal.App.3d at p. 951.)

By contrast, here the information specially alleged defendant had suffered the 1998 and 2006 felony convictions but also that he had served a prison term as described in Penal Code section 667.5 for each offense. Viewing his post-trial admissions in the context of the entire proceedings (cf. *People v. Mosby* (2004) 33 Cal.4th 353, 356 [court to evaluate totality of circumstances surrounding admission of sentencing enhancement allegations to determine if admission is voluntary and intelligent]), it is clear defendant was admitting the allegations set forth in the information, which included all elements necessary to support an enhancement under section 667.5, subdivision (b). (See *People*

v. Ebner (1966) 64 Cal.2d 297, 303 [“[d]efendant’s admission of the prior convictions is not limited in scope to the fact of the convictions but extends to all allegations concerning the felonies contained in the information”]; *People v. Cardenas* (1987) 192 Cal.App.3d 51, 61 [“admission of prior convictions where the charging information specifically alleges the convictions resulted in prior separate prison terms is deemed an admission such prison terms were separately served”]; see also *People v. Welge* (1980) 101 Cal.App.3d 616, 623 [“admission of prior convictions cannot be construed as an admission that separate terms were served therefor, in the absence of an allegation in the information or complaint that the defendant served separate terms on the prior convictions”].)⁴

⁴ Because defendant’s trial counsel elected to have the bifurcated proceeding on the prior prison term enhancements occur at the sentencing hearing, when taking defendant’s plea, the trial court had before it a probation and sentencing report that reflects defendant was sentenced to a two-year term in state prison for the 1998 conviction under Health and Safety code section 11350, subdivision (a), that he was released and then found in violation of parole in July 1999, at which time he was returned to prison to finish his term; and defendant was sentenced to a two-year term for the 2006 conviction under Health and Safety Code section 11351. Because it is hearsay and defendant did not consent to its consideration, the information in this report is not properly included in assessing whether the People established the elements necessary for the Penal Code section 667.5, subdivision (b), enhancement. Nonetheless, the fact this report clearly confirms defendant’s 1998 and 2006 convictions and sentences support imposition of the two one-year enhancements perhaps explains why the trial judge and the prosecutor were not more thorough in eliciting detailed admissions from defendant.

DISPOSITION

The judgment is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.